

BEST AVAILABLE COPY

NIXON & VANDERHYE, PC Fax: 703-816-4100

Oct 11 2005 11:29

P.05

DAHLMAN et al.
Appl. No. 09/825,353
October 11, 2005

REMARKS/ARGUMENTS

Reconsideration and allowance are respectfully requested.

Claims 1, 3-9, 12, 13, 16-22, 24-28, and 30-36 stand rejected under 35 USC 102(e) as being anticipated by commonly-assigned H'mimy et al. Applicants respectfully traverse this rejection.

To establish that a claim is anticipated, the Examiner must point out where each and every limitation in the claim is found in a single prior art reference. *Scripps Clinic & Research Found. v. Genentec, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991). Every limitation contained in the claims must be present in the reference, and if even one limitation is missing from the reference, then it does not anticipate the claim. *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565 (Fed. Cir. 1986). H'mimy does not meet this rigorous standard.

H'mimy describes assigning frequencies from a reuse group according to service type and subscriber location. As explained in H'mimy's abstract, "a mobile station requests a transmission channel. A network element then receives the request and determines the data rate requirements of the mobile station for the level of service provided by the network to the mobile station. Concurrently, the signal strength from the mobile station to a serving base station subsystem is measured. The network element then assigns a frequency to the mobile station which belongs to a reuse frequency group that supports the data rate requirements at the signal strength measured."

H'mimy does not teach "establishing a connection with a mobile radio in a cell that includes the first type of channel and the second type of channel," as recited for example in claim 1. Only a dedicated channel type is allocated to the mobile for an established connection. The Examiner's reliance on the common channel referred to by H'mimy at col. 4, lines 12-18 is

BEST AVAILABLE COPY

NIXON & VANDERHYE, PC Fax: 703-816-4100

Oct 11 2005 11:29

P. 06

DAHLMAN et al.
Appl. No. 09/825,353
October 11, 2005

misplaced. This text reads "[c]hannels may be divided into dedicated subchannels which are allocated to a mobile handset 12, and common channels which are used by mobile handsets 12 in the *idle mode*." Thus, the common channels are not part of the established connection with the mobile, only a dedicated subchannel is used in the established connection. As a result, only one type of channel is included in the established mobile connection rather than two different channel types as recited in the independent claims 1, 12, 30, and 36. Therefore, the anticipation rejection is improper and should be withdrawn.

Another reason why the anticipation rejection is improper is that H'mimy does not disclose "associating a first frequency reuse for the first type of channel," and "associating a second frequency reuse for the second type of channel," as recited for example in claim 1. H'mimy describes assigning a *single* frequency reuse pattern to a mobile, and that assignment is based on data rate and signal strength and not on the type of channel. Indeed, claim 1 or H'mimy states: "the network element assigning a frequency to the mobile station, said frequency belonging to a reuse frequency group that supports said data rate requirements at said signal strength." There certainly is no teaching in H'mimy of the common channel being used by idle mobiles being assigned to any frequency reuse pattern. In contrast to each mobile connection in H'mimy being assigned a single frequency from one frequency reuse pattern, the mobile in claim 1 uses frequencies from two different frequency reuses during the established connection.

That H'mimy does not disclose using different frequency reuse values for different types of radio channels as recited in the independent claims means the anticipation rejection is improper.

In addition, claim 1 recites that "one of the channels is a code division multiple access (CDMA) channel." A similar recitation is found in claim 12. Claim 24 explicitly recites a code

BEST AVAILABLE COPY

NIXON & VANDERHYE PC Fax: 703-816-4100

Oct 11 2005 11:29

P.07

DAHLMAN et al.
Appl. No. 09/825,353
October 11, 2005

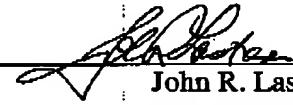
division multiple access (CDMA) cellular communications system, and claims 30 and 37 recite first and second different CDMA channel types. H'mimy only makes a passing reference to CDMA saying that throughput depends on the C/I in "both CDMA and TDMA" systems." But the description of the channels in H'mimy is limited to a GSM network with TDMA/FDMA type channels. See col. 4, lines lines 3-16. Indeed, all of column 3 is devoted to describing a GSM type system. CDMA type channels are not described. The Examiner has applied H'mimy as an anticipatory reference and it must show each claim feature.

A number of dependent claim features are also lacking. For example, several claims recite that different reuses are used for an uplink type channel as compared to a downlink type channel. Again the Examiner seems to be relying on the common channel used by idle mobile that are not involved in an established connection. The common channel also is not allocated a particular frequency reuse.

It is respectfully submitted that the present application is in condition for allowance and an early notice to that effect is earnestly solicited.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 

John R. Lastova
Reg. No. 33,149

JRL:slj
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100